Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Request to Update Default Compensation Rate for	)	WC Docket No. 03-225
Dial-Around Calls from Payphones	)	RM No. 10568

PETITION FOR RECONSIDERATION

The International Prepaid Communications Association, Inc[1] (IPCA) pursuant to Section 1.106 of the Commission's Rules, hereby petitions the Commission to expeditiously reconsider and reverse its decision in the Report and Order adopted July 27, 2004 and released August 12, 2004 which would modify the default rate of payphone compensation for "dial-around" calls (DAC) set forth in section 64.1300(c) of FCC rules by increasing the rate to $.494 per call.

For the reasons set forth below, IPCA urges the Commission to reconsider its decision so as to better reflect the realities of the prepaid phonecrard industry, and conform with the Commissions rules regarding implementing its orders.

SUMMARY:

In adopting its rule, with an effective date mere weeks after announcing it, the Commission put the prepaid phonecard industry in an untenable position. Cards printed and in storage, cards in distributors' hands, cards on retail shelves, and cards in consumers' hands have been produced with a DAC charge to cover the costs of the previous default rate of payphone compensation of $0.24 per completed call. Companies that do not change the rates charged customers to pay the new higher fees stand to lose money on every payphone call -- threatening their financial stability and even their continued existence. An alternative, to raise the fees, risks massive confusion on the part of the consumer and possible charges of misleading the consumer. The Commission ignored this issue in its Order.

The Commission did not consider the alternative of "grandfathering" of extant phonecards.

The Commission relied on false data in determining the number of small businesses affected. It assumes that there are 37 phonecard providers 36 of which qualify as small businesses. A figure that is ludicrous on its face –The state of Florida alone has 172 companies registered. Industry publications and experts estimate the total from 500 – 1,000.

Fourthly, the Commission has ignored the impact of this order on the poor and disadvantaged and the counter-productive impact the order will have on the Commission's policy goal of universal service. Phonecards provide the least expensive means of making long distance calls for those without home phone service, or without home long distance service.

It is not widely recognized that the prepaid phonecard industry would not have grown as fast as it did had not the deregulation of payphone long-distance rates resulted in often confiscatory rates imposed on those who used credit cards or deposited coins. SUMMARY:

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[1] The IPCA does not purport to speak for any of its members that may also be PSPs in this proceeding.

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It is not widely recognized that the prepaid phonecard industry would not have grown as fast as it did had not the deregulation of payphone long-distance rates resulted in often confiscatory rates imposed on those who used credit cards or deposited coins. Phonecards allowed the consumer to avoid such rates. Today, they continue to offer the most economical way of obtaining long distance service. Phonecards serve 50,000,000 million persons regularly and 61% of the population at least once per year.

FACTS AND DISCUSSION

<u>Grandfathering</u>.

Cards already produced should be grandfathered. Approximately seven states cap the DAC charge permissible on prepaid phonecards, and that cap is $0.24 per call. To our knowledge, at this time, no state has modified its cap – meaning that cards sold in those states that remain consistent with the law will lose money for the issuer.

Company's issuing phonecards have lead-times prior to placing them in the hands of distributors or retailers that vary from a few weeks to a year. In other words, some companies will print phonecards and point-of-sale (POS) material up to a year in advance to obtain savings in large print runs. These companies can have hundreds of thousands of dollars in investments in these card stocks.

Distributors have agreements with phonecard issuers that provide for certain volumes and commission rates. Often the distributor is responsible for printing cards, packaging and POS materials. Distributors are usually small businesses – seldom over ten employees – and these investments are substantial. Changing the DAC rate with the minimal advance notice makes it impossible for these companies to conform without very significant losses.

Retailers directly relate to the customers and change their posters advertising certain phonecards with difficulty. In addition, they face making explanations to consumers as to the changes.

Phonecards expire at greatly varying rates. Some cards may expire 90 days after first use. Other company will honor a card indefinitely. Any company that doesn't change its DAC rate will lose substantial sums on cards.

The bizarre effects of doubling the DAC charges a phonecard user would face would mean that to cover these costs, the DAC fees attached to a given call from a payphone would approach one dollar. This would be necessary to recoups the costs of deep discounts to distributors and retailers, plus the record processing and reporting costs. Thus, it would increasingly make payphones economically impractical to the millions of phonecard users.

It may be helpful to explain how such an increase would come about. It is not unusual for a phonecard issuer to offer a large discount to wholesalers and distributors. Discounts range up to 60% of the retail price. A 40% discount is common to provide incentives for distributors and retailers. Thus if a phonecard issuer receives $6 for every $10 phonecard, he can not cover the new DAC level of $0.49. By reducing the value of a $10 phonecard by $0.49 for every completed payphone call that would net the issuer only $0.29 (60% of $0.49). The base DAC charge on any card would have to be at least $0.82 (60% of $0.826 is $0.49). If the issuer added processing and other costs related to DAC, charges to the consumer would most logically be closer to a dollar to break even. Higher discounts to distributors mean higher DAC charges are required to break even.

<u>Consumer Confusion and Rate-Change Issues.</u>

By not considering alternatives to the rapid adoption of the new DAC level, the Commission may effectively force phonecard issuers to change their rates on the millions of cards already produced and already in the hands of distributors, retailers and consumers.

Let us use an example. Company XYZ sells domestic long distance service at an average of $0.05 per minute and bears costs of $0.025 cents per minute for his long distance and related expenses. If he gives 40% discounts to distributors on an average ten-minute call he stands to make $0.10. If he has been changing a $0.50 DAC charge for payphone calls, and it cost him $0.02 per call to process and pay the DAC charge , he was earning roughly $0.4 on every payphone call, for a total of $0.14 per payphone call. But, if he does not change his rate in view of the new $0.494 rate, he would, in fact now loose at least $0.13 per payphone call, assuming the costs of DAC administration do not increase.

But, a company that can not or chooses not to bear these losses, will program its computers to charge a new DAC fee. It will logically inform those in its distribution chain of the necessity of the change. It may put notices on its voice-prompts (and bear the cost of the added long-distance time taken by the announcement. It will certainly bear added costs by servicing added "Customer Service" calls from concerned consumers.

But, there is the intangible cost that is being imposed by the Commission order on the good reputation of the phonecard issuer and the retailers who sold the cards. It would also imperil the good relations a phonecard issuer has with his distributors. It certainly imperils the good reputation of the company with the consumer who bought a card expecting a DAC fee of, say $0.50.

In addition, there is the risk that some regulatory agencies will view the required though precipitous rate change as possibly in violation of disclosure requirements for phonecards or possibly a deceptive trade practice. In effect, the Commission has forced companies to chose between possible violations of legal regulations or financial ruin. Given the tenuous fiscal situation of marginal phonecard issuers, the choice to bear the costs may, in certain circumstances, mean a choice to go bankrupt – and bankruptcy will deprive those creditors and holders of phonecards – including consumers – of the services promised on phonecards.

<u>The Commission's Use of Faulty Data</u>

The Commission states, in its section entitled, "Description and Estimate of the Number of Small Entities to which the Rules Will Apply" that, "12. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report."

Further, it stated, "According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

As stated above, the Florida Public Service Commission lists 172 phonecard providers registered in that state. But because of interpretations of the Florida law and other reasons, industry experts estimate that even that number is a fraction of the number of phonecard issuers selling their product in Florida alone. An informal survey of industry leaders by the IPCA indicates estimates anywhere from 400 phonecard providers to 1200. That means that the Commission's estimates of the number of small businesses impacted by its rule is off by a factor of up to32,000%.

The Commission should have recognized the fallacy of this number and recognized that hundreds of phonecard providers would be affected. But in addition, it should have recognized that thousands of distributors would be affected and tens of thousands of retailers.

One can speculate how the Commission's "*Trends in Telephone Service*" adopted the grossly fallacious number. Perhaps it excluded all companies that provided other sorts of telecom services. Perhaps its definition of phonecard provider is based on limited understanding of the phonecard business.

There are at least three different kinds of phonecard providers. The first is the switch-based reseller – those firms that have their own switch. The second is the phonecard provider that rents a portion of a switch and controls it directly. The third is the phonecard provider that has "virtual" switch – an arrangement with a service bureau that varies greatly from firm to firm, but has one common factor: the phonecard provider is the responsible entity for providing the telecom service, and puts itself forward as the carrier.

The Order's Impact on Poor, Disadvantaged, and Phoneless.

The Commission has a mandate to promote universal telecom services. The new DAC order is contrary to that mandate.

A typical person without readily available telecom service depends on prepaid phonecards. The highly competitive phonecard industry provides economical long distance service for those with access to a phone. The new order may easily double the cost of their telecom service.

Those most dependent on payphones – generally low-income persons – will have every incentive to abandon payphones for alternatives. These persons are very cost-sensitive and they will evaluate the new higher costs in view of alternatives. They will certainly react by using non-payphones. But, they will also resort to higher-cost telecom services such as prepaid wireless. And, they will reduce their use of telecom services.

CONCLUSION:

The Commission must adhere to its rules. By overlooking crucial facts and by not considering the impact on thousands of businesses – let alone the impact on those without telecom service – the Commission erred in its decision.

At the very least, the Commission should suspend implementation of the order until it can consider the facts and laws not considered in the current order.

In addition, the Commission should include a provision for grandfathering for any increase in the DAC so that the industry can change its programming, its cards, its packinging and its POS material, and give state regulators an opportunity to modify laws and rules inconsistent with an in crease in the DAC.

IPCA is the trade association of the prepaid phonecard industry. Its members include, among others, switch-based resellers issuing prepaid phonecards, distributors, and others who will be directly affected by this order. Thus, IPCA clearly has standing to petition for reconsideration of the Report and Order.

Respectfully submitted,

THE INTERNATIONAL PREPAID COMMUNCIATIONS
ASSOCIATION, INC.

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